

NO. 2011-38946

REDUS TX PROPERTIES, LLC,

Plaintiff,

V.

BURGER KING DTN I, LLC, and  
MEHBOOB SHARIFF,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, REDUS TX PROPERTIES, LLC, Plaintiff herein, which files this  
its Original Petition complaining of BURGER KING DTN I, LLC, and MEHBOOB SHARIFF,  
Defendants herein, and for its causes of action would respectfully show unto the Court the  
following:

I.

**DISCOVERY LEVEL**

Plaintiff files this action under discovery level No. 2 pursuant to Tex.R.Civ.P.190.3.

II.

**PARTIES**

Plaintiff, REDUS TX PROPERTIES, LLC, is a company licensed and authorized to  
do business in the State of Texas and is landlord to the lease agreement defined hereinafter.

Defendant, BURGER KING DTN I, LLC, represented in the Lease Agreement that  
it is a Texas corporation, purportedly doing business in Harris County, Texas. A recent search of  
the Texas Secretary of State records reflects that there is no record of BURGER KING DTN I, LLC.  
Accordingly, Plaintiff is serving BURGER KING DTN I, LLC through its president and purported  
owner, Mr. MEHBOOB SHARIFF, at 4007 Monticello Drive, Sugar Land, Fort Bend County, Texas  
77479, or wherever he may be found. Citation is requested at this time.

FILED  
HARRIS COUNTY, TEXAS  
CLERK OF DISTRICT COURT  
2011 JUN 29 AM 11:50  
MAIL PROCESSING DEPT  
BY P.6

Defendant, MEHBOOB SHARIFF, is an individual who resides in Texas and may be served at his place of residence located at 4007 Monticello Drive, Sugar Land, Fort Bend County, Texas 77479, or wherever he may be found. Citation is requested at this time.

III.

**JURISDICTION**

This action involves the breach of a commercial lease agreement resulting in damages to Plaintiff. Said damages are within the jurisdictional limits of this Court.

IV.

**VENUE**

Venue is proper in Harris County pursuant to Texas Civil Practice and Remedies Code Annotated, Section 15.0115, because the cause of action which Plaintiff complains of involves the breach of a lease agreement for the rental of space located in Houston, Harris County, Texas.

V.

**BACKGROUND**

On July 31, 1997, Texas Commerce Bank National Association, as Landlord, and Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF, as Tenant, entered into a lease agreement for the rental of approximately 4,210 square feet of lease space located at 811 Rusk Street on a portion of Block 82, South Side Buffalo Bayou, Houston, Harris County, Texas 77002. The monthly rental owed by Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF, to Plaintiff is set out in the terms of the lease agreement. The terms of the lease agreement are more particularly described in a true and correct copy of the lease agreement which is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes.

On July 1, 1998, Chase Bank of Texas, National Association, as Landlord and Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF, as Tenant entered into a first amendment to the lease space agreement whereby the lease agreement was amended to increase the

term. A true and correct copy of the first amendment to lease is attached hereto, marked as Exhibit "B", and is incorporated herein for all purposes.

The lease agreement and first amendment to lease including, all exhibits, riders and addendums are hereinafter collectively referred to as "Lease." The lease space identified in the Lease is hereinafter referred to as "Leased Premises."

VI.

**FIRST CAUSE OF ACTION: BREACH OF LEASE**

Plaintiff would show unto the Court that pursuant to the terms of the Lease, Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF, entered into possession of the Leased Premises. Plaintiff would show that Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF, have failed and refused and continue to fail and refuse to pay the monthly rental payments due pursuant to the terms of the Lease. Plaintiff would show that Defendants owe Plaintiff \$153,305.25, which takes into consideration all lawful offsets and credits. This amount represents all accrued, unpaid rentals through June 30, 2011, for which Plaintiff here and now sues Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF.

VII.

**DEFAULT NOTICE**

Plaintiff would show unto the Court that Defendants have been notified of Plaintiff's demands on several occasions, including Plaintiff's formal demand dated June 7, 2011. Although demand for payment has been made, Defendants have failed and refused and continue to fail and refuse to pay the amounts due and owing pursuant to the terms of the Lease.

VIII.

**SECOND CAUSE OF ACTION: ANTICIPATORY BREACH OF LEASE**

Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF's, failure to pay the monthly rentals and abandonment of the Leased Premises constitute events of default as set

out under the terms of the Lease. Also, in the alternative, Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF's, refusal to pay monthly rentals when due and failure to comply with the terms of the Lease in all other respects, constitute an anticipatory breach of the Lease. Plaintiff will show that its measure of damages for an anticipatory breach is the present value of the rentals to accrue pursuant to the terms of the Lease after taking into consideration all lawful offsets and credits.

Additionally and/or alternatively, without waiver of any of the above and foregoing, due to Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF's, anticipatory breach of the Lease and refusal to comply with the terms of the Lease in all other respects, Plaintiff is entitled to damages for anticipatory breach of the Lease. Plaintiff would show that the figure in this case is \$325,550.98 taking into consideration a present value factor of six percent (6%). Plaintiff would prove the reasonable cash market value of the Leased Premises for the unexpired term by expert testimony but at this time believes this amount to be \$158,424.00. Therefore, Plaintiff has been damaged by Defendants' anticipatory breach of the Lease in the amount of \$320,432.23, which includes accrued rent as stated above, for which Plaintiff here and now sues Defendants, BURGER KING DTN I, LLC and MEHBOOB SHARIFF.

#### IX.

#### **THIRD CAUSE OF ACTION: PRE-JUDGMENT INTEREST**

Plaintiff would show unto the Court that Plaintiff's damages in the amount of \$320,432.23 is a liquidated and ascertainable sum. Therefore, Plaintiff is entitled to pre-judgment interest thereon in accordance with the terms of the Lease per annum as allowed by the statutes of the State of Texas.

X.

**FOURTH CAUSE OF ACTION: PROMOTER LIABILITY**

Plaintiff alleges and incorporates by reference all of the facts stated above. Additionally, and/or alternatively, Defendant, MEHBOOB SHARIFF, is liable under the theory of promoter liability. Defendant, MEHBOOB SHARIFF, signed the Lease Agreement on behalf of, and in the name of BURGER KING DTN I, LLC, which at this time remains an unformed entity. Thereafter, Defendant, MEHBOOB SHARIFF, occupied, used, took advantage of and accepted all the benefits of the Lease, and by such actions personally ratified the Lease. Therefore, MEHBOOB SHARIFF is personally liable on the Lease.

XI.

**FIFTH CAUSE OF ACTION: ATTORNEYS' FEES**

As a result of Defendants' default on the terms of the Lease, Plaintiff has been required to employ the law firm of Womac & Associates to file this suit and has agreed to pay said law firm a reasonable fee for the prosecution and collection thereof. Recovery of reasonable attorneys' fees is authorized in this suit pursuant to the terms of the Lease and the provisions of Chapter 38 of the Texas Civil Practice and Remedies Code. In this connection, Plaintiff has incurred and will continue to incur reasonable attorneys' fees for which Defendants are obligated to pay.

XII.

**CONDITIONS PRECEDENT**

Plaintiff would show unto the Court that it has performed all conditions precedent to Plaintiff's recovery of the damages stated herein pursuant to Chapter 54 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays unto the Court that Defendants be duly cited to appear and answer herein and, upon final hearing hereof, that Plaintiff have judgment against Defendants jointly and severally for:

- 1) \$320,432.23 for Plaintiff's actual damages;
- 2) Plaintiff's reasonable attorneys' fees for trial and any appeal;
- 3) pre-judgment and post-judgment interest at the rates per annum as allowed by the statutes of the State of Texas;
- 4) costs of Court; and
- 5) for such other and further relief, both general and special, at law and/or in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

By: 

Brian D. Womac  
State Bar No. 21873600  
Womac & Associates  
Two Memorial City Plaza  
820 Gessner, Suite 1540  
Houston, Texas 77024  
(713) 751-9200 - Telephone  
(713) 751-0808 - Facsimile

ATTORNEYS FOR PLAINTIFF